

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SUSANNA MIRKIN, Individually and on
Behalf of All Others Similarly Situated

Plaintiff,

Case No.: 18 Civ. 2949 (ARR) (JAM)

v.

XOOM ENERGY, LLC and XOOM
ENERGY NEW YORK, LLC,

Defendants.

**DECLARATION OF J. BURKETT MCINTURFF IN OPPOSITION TO
DEFENDANTS' MOTION TO DECERTIFY THE CLASS**

J. Burkett McInturff, an attorney duly admitted to practice before the Eastern District of New York, declares the following under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. My firm, Wittels McInturff Palikovic, is Class Counsel for Plaintiff Susanna Mirkin and the Class. Based on my active participation and supervision in all material aspects of the prosecution of this class action against Defendants XOOM Energy, LLC and XOOM Energy New York, LLC (together, “Defendants” or “XOOM”), I have personal knowledge of the matters set forth herein.

2. I make this Declaration in Opposition to Defendants’ Motion to Decertify the Class (“Opposition”) to authenticate the attached exhibits referenced in the accompanying Memorandum of Law and to substantiate certain additional facts.

I. Items Discussed in Plaintiffs’ Opposition

3. XOOM’s contentions about the difference between so called “green” electricity and standard “brown” electricity, *see* Defs.’ Br. at 17, are incorrect because discovery shows that (1)

these customers were subject to the exact same pricing term as other Class Members; and (2) XOOM’s “green” electricity customers receive the exact same “brown” electricity, XOOM merely purchases renewable energy credits to supposedly offset the environmental impacts of “brown” electricity. Notwithstanding the claims of “green” energy, XOOM provided the same “brown” energy to its customers regardless of the plan they were on.

4. The cost of renewable energy credits are minor compared to XOOM’s other supply costs, as reflected in XOOM’s rate-setting workbooks.

5. XOOM “green” energy customers comprise less than 1% of the Class.

II. Authenticating Documents

6. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the deposition of Plaintiff’s Expert Seabron Adamson, dated November 8, 2022, pp. 1, 20, 69–73, 98, 141.

7. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the deposition of XOOM’s Rule 30(b)(6) corporate witness, Director of Pricing and Structuring Jason Loehde, dated July 28, 2022, pp. 1, 126–127, 190–191, 295.

8. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the deposition of XOOM’s Director of Product Management Ryan Park, dated July 22, 2022, pp. 1, 124, 266.

9. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the deposition of XOOM’s Senior Vice President, Energy Supply and Pricing, Andrew Coppola, dated May 11, 2022, pp. 1, 282, 288.

10. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the deposition of XOOM’s Expert David Coleman, dated November 16, 2022, pp. 1, 35, 111.

Dated: New York, New York
April 5, 2024

Respectfully submitted,

/s/ J. Burkett McInturff
J. Burkett McInturff

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2024, the foregoing was served via email on all counsel of record.

By: /s/ J. Burkett McInturff
J. Burkett McInturff